

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

Phan v Minister for Immigration and Citizenship [2025] FedCFamC2G 749

File number(s): SYG 2959 of 2020

Judgment of: **JUDGE KAUR-BAINS**

Date of judgment: 23 May 2025

Catchwords: **MIGRATION** – application for review of a decision by the Administrative Appeals Tribunal affirming a decision not to grant the applicant a Partner (Residence) (Class BS) Visa – Tribunal found the applicant did not meet Public Interest Criterion 4020(1) and there were no relevant compassionate or compelling circumstances to justify granting the partner visa – unrepresented litigant – explanation by the Court of practice and procedure as to adjournment and requirement to adduce evidence – whether the Tribunal ignored relevant material or decision was legally unreasonable – no jurisdictional error established – application dismissed

Legislation: *Migration Act 1958* (Cth), s 5F
Migration Regulations 1994 (Cth), cll 801.226 and 820.266 of Schedule 2, cl 4020 of Schedule 4

Cases cited: *BGZ15 v Minister for Immigration and Border Protection* [2017] FCA 1095
Hamod v New South Wales [2011] NSWCA 375
SZRUR v Minister Immigration and Border Protection (2013) 216 FCR 445
Trivedi v Minister for Immigration and Border Protection (2014) 220 FCR 169; [2014] FCAFC 42

Division: General Federal Law

Number of paragraphs: 43

Date of hearing: 13 May 2025

Place: Sydney

Solicitor for the Applicant: In person

Solicitor for the First: Ms Q Ren of HWL Ebsworth

Respondent:

The Second Respondent: No appearance

ORDERS

SYG 2959 of 2020

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: **CAM LOAN PHAN**
 Applicant

AND: **MINISTER FOR IMMIGRATION AND MULTICULTURAL**
 AFFAIRS
 First Respondent

ADMINISTRATIVE REVIEW TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE KAUR-BAINS

DATE OF ORDER: 23 MAY 2025

THE COURT ORDERS THAT:

1. The name of the First Respondent is amended to read “Minister for Immigration and Citizenship”.
2. The Application is dismissed.

Note: The form of the order is subject to the entry in the Court’s records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE KAUR-BAINS

- 1 The first named applicant, a citizen of Vietnam, seeks judicial review of a decision of the Administrative Appeals Tribunal (**Tribunal**) dated 9 December 2020. On 10 February 2021, the second named applicant filed a notice of discontinuance. Therefore, I will refer to the first named applicant in this judgment as the applicant.
- 2 The Tribunal affirmed a decision of a delegate of the Minister not to grant the applicant a Partner (Residence) (Class BS) visa (**visa**). The applicant raised four grounds of review set out at [27] of this judgment. For the reasons set out below, I find the applicant has not demonstrated jurisdictional error.

BACKGROUND

- 3 On 1 February 2013, the applicant entered Australia on a Prospective Marriage visa to marry Mr Van Bay Pham (**sponsor**). On 6 June 2013, a Partner (Temporary) visa was granted to the applicant after the applicant and the sponsor married.
- 4 The Department received a letter from the applicant's migration agent and solicitor, Francis Tran of F. T. Tran Solicitor dated 20 May 2015, attaching documents as evidence of the applicant engaging in a genuine and continuing relationship with the sponsor (Court Book (**CB**) 186 to 284). Relevantly, the following documents were provided:
- (a) Statutory declaration signed by the applicant dated 18 May 2015, claiming the applicant and the sponsor commenced their relationship in February 2013 *and had been living together for more than two years*. In that statutory declaration, the applicant stated she and the sponsor shared living expenses and went to the Quang Am temple to pray together every month (CB 208 to 212).
 - (b) Statutory declaration signed by the sponsor on 18 May 2025 stating the applicant and the sponsor began their relationship in February 2013 and had been living together for more than two years (CB 213 to 215).
 - (c) Statutory declaration signed by the applicant's sister dated 13 May 2015, which suggested the applicant and the sponsor were in a genuine and continuing relationship (CB 218 to 219).

- (d) Statutory declaration signed by Mr Duong on 19 May 2015, which suggested the applicant and the sponsor were in a genuine and continuing relationship (CB 221 to 223).
- (e) Bank statements sent to the applicant and sponsor at the same address (CB 225 to 247).
- (f) Letters from Centrelink and various government bodies sent to the applicant at the address where the sponsor lived (CB 260 to 272).
- (g) Photographs of the applicant and the sponsor together on 19 January 2014 (CB 279 to 284).

5 On 23 May 2017, the sponsor told the Department he was no longer in a relationship with the applicant. On 7 June 2017, the Department wrote to the applicant informing her the sponsor had said his relationship with the applicant had ceased (CB 302 to 304). On 24 July 2017, the applicant's new migration agent, Vanessa Burn from Playfair Migration Agents, wrote to the Department stating the applicant and the sponsor had separated due to family violence (CB 310 to 326).

6 By letter dated 25 June 2017, Mr Tran, migration agent and solicitor, wrote to the Department enclosing a statement provided by the applicant to the NSW Police dated 11 July 2017, stating as follows (as per original) (CB 319):

In February 2013 I came to Australia on a spousal visa with my husband Bay Van PHAM who was my sponsor. I was married to him in March 2013 and *lived with him until August 2013* when he kicked me out of the house. We never formally divorced but I was kicked out then by husband... (emphasis added)

Invitation to comment on information letter

7 By letter dated 24 October 2017, the Department wrote to the applicant as follows (CB 353 to 356):

It is a requirement for the grant of a Partner (subclass 801) visa that the applicant satisfies Public Interest Criterion (PIC) 4020 contained in clause 4020 of Schedule 4 to the Migration Regulations 1994. Subclause 4020(1) requires that there is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Administrative Appeals Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- the application for the visa; or
- a visa that the applicant held in the period of 12 months before the application was made.

If there is such evidence, subclause 4020(4) provides that PIC 4020(1)(a) or (b) and subclause 4020(2) will nonetheless be satisfied if the Minister is satisfied that:

- compelling circumstances that affect the interests of Australia; or
- compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the grant of the visa.

You submitted documentation to the department to support your subclass 801 visa application on 25 May 2015. Within these documents you provided a statutory declaration, dated 18 May 2015, declaring that you and your sponsor have a mutual commitment to a shared life as husband and wife to the exclusion of all others, that your relationship with your sponsor is genuine and continuing and that you and your sponsor currently live together. You also provided a range of documents to support your claim including a Form 888 by Henh Phoong Duong, where he states that he believes your relationship with your sponsor is genuine and continuing.

On 25 July 2017, you provided the department with further documents claiming that you had been a victim of family violence perpetrated by your sponsor. To support your claim you provided a NSW Police Force Statement of a Witness Form P190A. Within this form you state that *'I was married to him [the sponsor] in March 2013 and lived with him until August 2013 when he kicked me out of the house. We never formally divorce but I was kicked out then...I have lived with my daughter and other friends since that time'*. You have signed this form on 11 July 2017, with the assistance of a Vietnamese Interpreter (Vendor: 95747). The form has been witnessed by Constable Matthew Skellern.

I have therefore drawn an initial conclusion that you have provided false and misleading information to the department regarding the nature of your relationship with your sponsor, namely that you had a mutual commitment to a shared life as husband and wife to the exclusion of all others, that the relationship between you and your sponsor was genuine and continuing and that you and your sponsor lived together or did not live separately and apart on a permanent basis when you provided documentation to the department on 25 May 2015, including your statutory declaration dated 18 May 2015.

- 8 In response, the applicant wrote to the Department on 14 November 2017 stating she was beaten by the sponsor, but did not call the police back then as she loved him (CB 364 to 382).

Delegate's decision

- 9 On 28 November 2017, a delegate of the Minister refused to grant the applicant the visa on the basis the applicant failed to satisfy cl 820.266 of Schedule 2 of the *Migration Regulations 1994* (Cth) (**Regulations**), because she did not meet Public Interest Criterion (**PIC**) 4020(1) in cl 4020 of Schedule 4 to the Regulations. The delegate found there was evidence the applicant had provided false and misleading information to the Department regarding her relationship with the sponsor. The reasons of the delegate were as follows:

On 24 July 2017, you advised the department that your relationship had ceased and

that you had been a victim of family violence perpetrated by your sponsor. To support your claim you provided documents on 25 July 2017 including a NSW Police Force Statement of a Witness Form P190A. Within this form you state that ‘I was married to him [the sponsor] in March 2013 and lived with him until August 2013 when he kicked me out of the house. We never formally divorce but I was kicked out then...I have lived with my daughter and other friends since that time’. You have signed this form on 11 July 2017, with the assistance of a Vietnamese Interpreter (Vendor: 95747). The form has been witnessed by Constable Matthew Skellern.

This information directly contradicted the information you provided to the Department on 25 May 2015. This leads me to believe you provided false and misleading information to the department regarding the nature of your relationship with your sponsor, namely that the relationship between you and your sponsor was genuine and continuing and that you and your sponsor lived together or did not live separately and apart on a permanent basis when you provided documentation to the department on 25 May 2015, including your statutory declaration dated 18 May 2015.

- 10 The delegate noted the applicant had not sought a waiver of PIC 4020(1) on any relevant compassionate or compelling reasons to justify the grant of a visa (CB 398).
- 11 On 6 December 2017, the applicant applied to the Tribunal for review of the delegate’s decision (CB 416 to 423).

TRIBUNAL’S DECISION

- 12 On 8 December 2020, the applicant appeared before the Tribunal by Microsoft Teams. At the Tribunal hearing, the applicant was assisted by an interpreter in the Vietnamese language (CB 479).
- 13 From [5] to [13] of the Tribunal’s reasons, the Tribunal set out the details of the documents the applicant provided to the delegate initially to support her claim that she was in a genuine and continuing relationship with the sponsor referred to in [4(a)] to [4(g)] of this judgment and the subsequent documents provided by the applicant in support of her claim of family violence referred to in [6] of this judgment. At [14] and [15] of the Tribunal’s decision, it noted the delegate’s decision where the delegate found the applicant did not meet PIC 4020(1).
- 14 At [22] of the Tribunal’s reasons, the Tribunal noted it explained to the applicant the delegate had found the applicant had provided false and misleading information under cover of the migration agent and solicitor’s letter dated 20 May 2015, claiming the applicant was living with the sponsor on a permanent basis.

- 15 The Tribunal noted the applicant's response was she did continue to see the sponsor and would cook for him even though she did not live with him (at [23] of the reasons). Further, the applicant said in relation to the documents from Centrelink and other government bodies, which suggested the applicant was living with the sponsor, the applicant said she was terribly sorry but because she came from Vietnam she did not know she had to change the information (at [24] of the reasons).
- 16 At [25] of the Tribunal's reasons, it noted it invited the applicant to provide any compelling circumstances that affect the interest of Australia or compassionate or compelling circumstances that affect the interest of an Australian citizen, permanent resident or eligible New Zealand to justify the granting of the visa.
- 17 The Tribunal noted the applicant submitted she had an aunt who lived in Australia, but she was not close to her and asked the Tribunal to consider her own situation ([26] of its reasons). The applicant's daughter also gave evidence she had been living in Australia for a long time, and it would be hard for her to go back to Vietnam ([27] of its reasons).
- 18 The Tribunal identified it needed to consider whether the applicant met PIC 4020 as required by cl 801.226 of Schedule 2 of the Regulations and also whether the requirements of PIC 4020 should be waived if there are compelling or compassionate reasons justifying the granting of the visa ([30] and [31] of its reasons).
- 19 From [32] to [40] of its reasons, the Tribunal considered whether the applicant provided information that was false and misleading in a material particular. At [34] of its reasons, the Tribunal noted, that for information to be false or misleading in a material particular, there had to be an element of fraud or deception by some person, to attract the operation of the provision, and cited the decision of *Trivedi v Minister for Immigration and Border Protection* (2014) 220 FCR 169; [2014] FCAFC 42.
- 20 The Tribunal did not accept the applicant's explanation referred to in [15] of this judgment and found she had engaged in a deliberate and calculated plan to provide false and misleading information to the Department for the sole purpose of obtaining the partner visa ([37] of the reasons).
- 21 The Tribunal found, at [39] of its reasons, the applicant in 2015 provided false and misleading information as to her alleged relationship with the sponsor and falsely claimed they were living together, regularly attended social events, and went to the Buddhist temple

to pray. The Tribunal, at [40] of its reasons, found the 2015 statement was false and misleading in a material particular in relation to the application for the visa, because s 5F of the *Migration Act 1958* (Cth) required the parties live together or not live separately and apart on a permanent basis and they have a mutual commitment to share a life as husband and wife to the exclusion of all others and their relationship is genuine and continuing.

22 From [42] to [48] of the Tribunal reasons, it considered whether the requirements of PIC 4020(1) should be waived and considered the only close relative the applicant had identified who was an Australian citizen was her sister. But it noted the applicant had provided no information which would indicate her sister would be adversely affected if the applicant was refused a visa. The Tribunal also noted the applicant had identified her aunt but had said she was not close to her aunt.

23 In these circumstances, the Tribunal was not satisfied the requirements of PIC 4020(1) should be waived and found the applicant did not satisfy PIC 4020 for the purpose of cl 801.226 of Schedule 2 of the Regulations.

RELEVANT LAW

24 This case concerns the application of PIC 4020, which relevantly provided as follows:

- (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

- (2) The Minister is satisfied that during the period:

- (a) starting 3 years before the application was made; and
- (b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

...

- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
 - (a) compelling circumstances that affect the interests of Australia; or

- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

...

PROCEEDINGS BEFORE THE COURT

25 The applicant appeared at the hearing before me as a litigant in person, assisted by a Vietnamese interpreter. Mindful of the Court's duty to unrepresented litigants (*Hamod v New South Wales* [2011] NSWCA 375 at [309] to [316]; *SZRUR v Minister Immigration and Border Protection* (2013) 216 FCR 445 at [37]), I explained to the applicant the role of the Court in undertaking judicial review. I ensured the applicant was in possession of all relevant documents, namely the Court Book, application, supporting affidavit of the applicant filed on 23 December 2020 and the Minister's written submissions dated 1 July 2021. The applicant did not provide any written submissions.

26 The applicant filed an affidavit dated 15 February 2021 that annexed a medical certificate from Dr Thi Thu Giang Nguyen, in respect of the applicant's daughter. Further, the applicant filed an affidavit dated 25 February 2021, which annexed a medical certificate from Dr Thi Thu Giang Nguyen in relation to the applicant and her relationship with the sponsor. The Minister objected to the said affidavits being admitted on the basis that the medical certificates were not before the Tribunal and were not relevant to any issues I needed to determine. I rejected the affidavits being admitted into evidence as the medical certificates were not before the Tribunal and were not relevant to any issues in this matter.

CONSIDERATION

Grounds in the application

27 The applicant's application filed on 23 December 2020 contained the following four grounds for judicial review (as per original):

1. Ignoring relevant material
2. Failing to consider a claim
3. Making findings that are unreasonable, and
4. Failing to adopt a fair process in making the decision

Applicant's contentions

- 28 At the hearing before me, the applicant said in 2015 her sponsor took her and her daughter to Mr Tran's, the migration agent and solicitor's office, to sign the statutory declaration dated 20 May 2015, which was then sent by the applicant's representative to the Department in support of her visa application. The applicant said she did not speak English and her sponsor and the solicitor asked her "just to sign the paper" and she signed it without knowing its contents. The applicant said she would not have signed the statutory declaration if she had known the statutory declaration said from 2013 she continued to live with the sponsor for more than two years and other matters that went to the issue of whether she and the sponsor were living together or not living separately and apart on a permanent basis. In response, the Minister submitted the applicant had not established she had told the Tribunal of these matters, to which the applicant replied she could not recall.
- 29 Mindful of the Court's duty to unrepresented litigants, I explained to the applicant she needed to provide me with a copy of the transcript of the Tribunal hearing, so I could determine whether the applicant had in fact said to the Tribunal the matters she alleged were said as referred to in [28] of this judgment. I informed the applicant as to the practice and procedure available in the Court for the granting of an adjournment of the hearing, to enable the applicant to file the type of evidence she had identified. The applicant informed me she wished to seek an adjournment of the hearing to enable her to provide me with a copy of the transcript of the Tribunal hearing. The Minister objected to the application for an adjournment on the basis the applicant had already had years to raise this issue and she had not raised the issue until the hearing before me. The Minister accepted the only prejudice to the Minister was as to costs but acknowledged that could be ameliorated by an order for costs against the applicant. Given the applicant only sought a relatively short adjournment, there is no prejudice to the Minister except as to costs, which can be dealt with by making an appropriate order for costs. Therefore, I granted an adjournment of the hearing and made orders as to the filing of further evidence from the applicant.
- 30 After the hearing, the applicant sent an email to my Chambers saying, "*I have thought it over. I do not want to wait any longer to go to court again on 18/06/2025 I am really exhausted and tired. I have been in Australia for eleven years and six months. I really love Australia. I ask you to consider me. I am sincerely grateful, I would like to know the results of today's court hearing thanks*" (as per original). Given the applicant indicated she no longer wanted

the adjournment, I vacated the orders in relation to the Minister providing a copy of the recording of the Tribunal hearing to the applicant.

31 On 23 May 2025, when this matter was listed for judgment, I confirmed with the applicant, who was assisted by a Vietnamese interpreter, she did not wish to file evidence as to what was said at the Tribunal hearing. I also raised with the applicant, given what she had said to me, as set out at [28] of this judgment, whether she wanted to ask me to grant her leave to file an amended application and evidence alleging the solicitor and migration agent, in asking her to sign the statutory declaration on 18 May 2015 and submitting the documents referred to in [4] of this judgment, acted fraudulently such that the application for the partner visa was invalid by virtue of the alleged fraud. I explained to the applicant briefly the relevant matters she would need to establish. However, the applicant declined to ask for further time to amend the application or provide evidence as to any alleged fraud on the part of the migration agent and solicitor.

32 Therefore, I will now turn to the four grounds for judicial review.

Grounds 1 and 2

33 Grounds 1 and 2 raise the issue of whether the Tribunal ignored relevant material or failed to consider the applicant's claim. At the hearing before me, the applicant could not expand upon what relevant material it was alleged the Tribunal ignored or what claim of the applicant the Tribunal failed to consider.

34 I find the Tribunal correctly identified the issue before it, as set out in [18], [19] and [22] of this judgment, being whether the applicant satisfied the criteria in PIC 4020(1) and if she did not, whether the Tribunal should waive the requirements of PIC 4020(1) on compelling or compassionate grounds. The Tribunal considered these matters as set out in [20] to [23] of this judgment and I cannot see it has ignored any relevant material or failed to consider a claim. Accordingly, I find no jurisdictional error is disclosed by grounds 1 and 2.

Ground 3

35 In Ground 3, the applicant alleged the Tribunal made findings that were unreasonable. The applicant could not expand upon why she said the Tribunal's findings were unreasonable.

36 The Tribunal had before it the documents referred to in [4] of this judgment, which were provided to the Department by the applicant's migration agent and solicitor under cover of

letter dated 20 May 2015. The Tribunal gave the applicant an opportunity to make any submissions in relation to the circumstances surrounding the provision and contents of the said documents. The applicant, as recorded at [36] and [37] of the Tribunal's reasons, admitted she had stopped living with the sponsor in July/August 2013 on a permanent basis, but said she still cooked for him and she did not know she was required to change her address with various organisations because she was from Vietnam.

37 The Tribunal did not accept the applicant did not know she should change her address because she was from Vietnam and found the applicant had deliberately and in a calculated plan provided false and misleading information to the Department for the sole purpose of obtaining the visa knowing she was not living with the sponsor on a permanent basis. The Tribunal also found the applicant conspired with her sister to provide a false statement ([37] of its reasons). I find it was reasonably open to the Tribunal to make these findings given it had before it the letter dated 20 May 2015, which enclosed the documents referred to at [4] of this judgment, which were numerous and all attempting to paint a picture that the applicant and sponsor were living together on a permanent basis. The applicant did not provide any explanation to the Tribunal as to why she said in her own statement she had been living with the sponsor or why her sister said the applicant and the sponsor were in a continuing and genuine domestic relationship. There may have been an innocent explanation, but none was offered to the Tribunal. In the absence of an innocent explanation, it was open to the Tribunal to infer from the numerous documents produced to the Department as referred to in [4] of this judgment that the applicant knew and participated in the deception.

38 Further, I find it cannot be said the Tribunal's decision in finding PIC 4020(1) ought not be waived was unreasonable given the matters set out in [22] of this judgment.

Ground 4

39 Ground 4 raised an allegation the Tribunal failed to adopt a fair process in making the decision. Again, the applicant could not expand upon ground 4.

40 I note the applicant was aware of the issue of whether she had provided information that was false and misleading in a material particular and whether PIC 4020(1) should be waived on compassionate or compelling grounds, as this matter was squarely raised in a letter by the delegate to the applicant as set out in [7] of this judgment. Further, the Tribunal invited the applicant to a hearing which she attended and was given an opportunity to provide

submissions and give evidence. In those circumstances, the Tribunal adopted a fair process in making the decision and I find no jurisdictional error is disclosed.

SELF-EVIDENT JURISDICTIONAL ERROR

41 Given the applicant was self-represented, I reviewed the reasons of the Tribunal to determine whether there was any self-evident jurisdictional error: *BGZ15 v Minister for Immigration and Border Protection* [2017] FCA 1095 per Flick J at [11]. I have not identified any such jurisdictional error.

CONCLUSION

42 As no jurisdictional error has been disclosed, the application must be dismissed.

COSTS

43 I will hear the parties as to costs.

I certify that the preceding forty-three (43) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Kaur-Bains.

Associate:

Dated: 23 May 2025

44